

A Foo Fio Na v Dr Soo Fook Mun & Ors

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 08–25 OF 2001(W)

STEVE SHIM CJ (SABAH AND SARAWAK), ABDUL MALEK AHMAD AND MOHTAR ABDULLAH FCJJ

B 19 NOVEMBER 2001

Civil Procedure — *Appeal* — *Leave to appeal* — *Appeal to Federal Court* — *Whether Bolam test in medical negligence should apply in relation to all aspects of medical negligence* — *Whether to public benefit for court to reconsider application of case*

C This was an application for leave to appeal against the decision of the Court of Appeal given on 5 April 2001. The main question for which leave was sought was whether the *Bolam* test in the area of medical negligence should apply in relation to all aspects of medical negligence.

D **Held**, allowing leave to appeal:

E The question posed was one of importance upon which further argument and a decision of this court would be to public advantage. In this regard, the court's attention had been drawn to later case jurisprudence from Australia and other Commonwealth countries, which it was contended, had refined the *Bolam* test to such an extent that it may now be necessary for this court to reconsider it (see p 130D–E).

[Bahasa Malaysia summary]

F Ini adalah satu permohonan untuk kebenaran membuat rayuan terhadap keputusan Mahkamah Rayuan yang diputuskan pada 5 April 2001. Persoalan utama dalam memohon kebenaran adalah sama ada ujian *Bolam* dalam bidang kecuaiian perubatan patut diterapkan berhubung dengan semua aspek kecuaiian perubatan.

G **Diputuskan**, membenarkan kebenaran membuat rayuan tersebut:

H Persoalan yang diutarakan adalah penting di mana hujah selanjutnya dan satu keputusan mahkamah ini akan merupakan satu kelebihan untuk pihak awam. Di sini, perhatian mahkamah bertumpu pada kes jurisprudens terdahulu dari Australia dan lain-lain negara Komanwel, di mana ia telah dihujahkan, telah memperincikan ujian *Bolam* sehinggakan kini ia adalah perlu untuk mahkamah ini mempertimbangkannya semula (lihat ms 130D–E).]

I **Notes**

For cases on leave to appeal, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 891–945.

Cases referred to

Bolam v Friern Hospital Management Committee [1957] 2 All ER 118 (refd)

Appeal from: Civil Appeal No W-02-281 of 1999 (Court of Appeal, Kuala Lumpur)

Mohamad Ariff bin Md Yusoff (Rajashree a/p Suppiah and See Eng Teong with him) (Cheang & Ariff) for the applicant.

PS Ranjan (Manmohan S Dhillon with him) (PS Ranjan & Co) for the first respondent.

GL Ambrose (Chooi & Co) for the second respondent.

Steve Shim CJ (Sabah and Sarawak) (delivering judgment of the court): This is an application for leave to appeal against the decision of the Court of Appeal given on 5 April 2001. The main question for which leave is sought is stated as follows: whether the *Bolam* test as enunciated in *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, in the area of medical negligence should apply in relation to all aspects of medical negligence.

Having heard arguments from counsel for the parties concerned, we are of the view that the question posed is one of importance upon which further argument and a decision of this court would be to public advantage. In this regard, our attention has been drawn to later case jurisprudence from Australia and other Commonwealth countries, which it is contended, has refined the *Bolam* test to such an extent that it may now be necessary for this court to reconsider the *Bolam* test.

It may be noted that in this case, the particular aspect of medical negligence relates more specifically to the duty and standard of care of a medical practitioner in providing advice to a patient on the inherent or material risks of the proposed treatment.

In the circumstances, we are satisfied that the question postulated above falls within the ambit of s 96(a) of the Courts of Judicature Act 1964. Leave is therefore allowed.

Leave to appeal allowed.

Reported by Chew Phye Ken

A

B

C

D

E

F

G

H

I